

The Magistrate Judge recommends dismissal, in part, because Petitioner has failed to exhaust state remedies. Petitioner did not file a petition for discretionary review and he has not filed a state application for habeas relief under Texas Code of Criminal Procedure art. 11.07. Therefore, he has failed to exhaust state remedies.

Although his federal petition is barred by the one-year statute of limitations, Petitioner may still be permitted to pursue relief in state court under art. 11.07. For that reason, this action will be dismissed without prejudice to Petitioner's right to pursue state habeas relief. *See Diaz v. Dretke*, No. 5:03-cv-236-C, 2004 WL 691213 at *6 (N.D. Tex. Mar. 31, 2004) (dismissing time-barred petition with prejudice to refiling in federal court, but without prejudice to Petitioner's right to pursue state habeas relief where he had never filed an art. 11.07 petition). Also, having failed to file objections to the Magistrate Judge's recommendation, Petitioner's only arguments for statutory or equitable tolling of the statute of limitations, which are set forth in his Amended Petition (ECF No. 5 at 9), are unavailing.

For the foregoing reasons, this action is **DISMISSED** with prejudice as time-barred, but without prejudice to Petitioner's right to pursue state habeas relief.

SO ORDERED this **21st day of February, 2019**.


Reed O'Connor
UNITED STATES DISTRICT JUDGE